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09/846,695	05/01/2001	Charles Steven Lisser	43238/233884	2902

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EXAMINER

BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,695

Applicant(s)

LISSER, CHARLES STEVEN

Examiner

Andre Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2001.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 22 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-32 have been examined.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-6, 8-21, 23, 25-27, 29 and 30 are rejected under 35 U.S.C. 101

because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case the independent claims 1, 23, and 29 only recite abstract ideas. The recited steps of establishing a mathematical frame of reference, determining a rating value, obtaining a first plurality of account balances, calculating a first sum, etc., does not involve, use, or

advance the technological arts (i.e., computer, processor, electronically, etc.), since the steps could be performed using pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention presents a rating value and determines a value for the performance indicator, thereby producing a useful, concrete, and tangible result, but not within the technological arts as explained above.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 22, 28, and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22, 28, and 32 are rendered vague and indefinite. The claims depend from method claims 1, 23, and 29, respectively, and recite a computer readable medium. As such, the claims are directed towards two different statutory classes. Further, the independent claims, from which they depend, could be infringed upon, without infringing on the dependent claims themselves, making them invalid dependent claims. The Examiner suggests writing the claims in independent form.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3-14, 17-19, and 22-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Quackenbush et al (US 2003/0172014).

As per claim 1, Quackenbush et al disclose a method for comparing the performance of business entities (i.e., comparable group analysis, ¶ 0021), the method comprising the operations of: establishing a mathematical frame of reference that is based upon historical data for at least both first and second entities of a plurality of entities (i.e., comparisons are made according to several historical ratios, ¶ 0046); determining a rating value based upon the mathematical frame of reference and data for the first entity (i.e., companies are ranked under the respective ratios, ¶ 0046); and presenting the rating value to the first entity without disclosing the data for the second entity to the first entity (i.e., the system receives external network data feeds, and automatically re-computes displayed values without presentation of data to user, ¶ 0016).

As per claim 3, Quackenbush et al disclose determining performance indicator values that are related to the rating value (i.e., companies ranked under the respective ratios, ¶ 0046) and presenting the performance indicator values to the

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first entity in response to a selection made by the first entity while the first entity was viewing the rating value (i.e., output displayed to user of base company, figure 2C).

As per claim 4, Quackenbush et al disclose obtaining a value for a performance indicator for the first entity (i.e., base company) and a value for the performance indicator for the second entity (i.e., companies P1 to PEn, figure 2C).

As per claim 5, Quackenbush et al disclose tracking the value for the performance indicator for first entity over time (i.e., models can be automatically updated on a real-time basis, ¶ 0016).

As per claim 6, Quackenbush et al disclose using the same equation for calculating the value for the performance indicator (i.e., financial metrics and performance ratios, ¶ 0023) for the first entity and the value for the performance indicator for the second entity, with different groups of account balances being the inputs to the equation for the first and second entities (i.e., financial data of the base company and a second company, ¶ 0032).

As per claim 7, Quackenbush et al disclose uploading the data to a web server via the Internet (web server 10, figure 1), wherein the establishing and determining operations are performed by the web server, and the presenting operation includes downloading the rating value from the web server to a computer via the Internet, and presenting a screen display, which includes the rating value, on a monitor associated with the computer (i.e., client 1 allows the user to access web server 10, ¶ 0031).

As per claim 8, Quackenbush et al disclose the identity of the second entity to the first entity (i.e., user is able to view the base company's relative performance versus that of the comparable group, ¶ 0021).

As per claim 9, Quackenbush et al disclose the data is for the same type of goods or services (i.e., each company in the same industry, ¶ 0022).

As per claim 10, Quackenbush et al disclose the data is selected from the group consisting of sales, expenses, gross profit and net profit (i.e., costs/revenues, price/earnings, ¶ 0023).

As per claim 11, Quackenbush et al disclose establishing a frame of reference selected from the group consisting of: a frequency distribution, a statistical measure of central tendency (i.e., median values, ¶ 0023), and a spread between lowest and highest data values of the data.

As per claim 12, Quackenbush et al disclose determining a relationship selected from the group consisting of rank (i.e., companies are ranked under respective ratios, ¶ 0046), a measure of difference between data from the first entity and a statistical measure of central tendency, and an indication of position of data from the fast entity within a spread between lowest and highest data values of the data.

As per claim 13, Quackenbush et al disclose ranking the data for the first entity (i.e., companies are ranked under respective ratios, ¶ 0046).

As per claim 14, Quackenbush et al disclose presenting a screen display for the first entity, with the screen display including an icon that is indicative of the ranking

(i.e., results 26 displayed in a variety of formats, including graphs and tables, ¶ 0037).

As per claim 17, Quackenbush et al disclose the data for the first entity is second data for a second period (i.e., quarterly fiscal period, ¶ 0046), and the method further comprises the operations of receiving first data for a first period for the first entity, wherein the first period is prior to the second period (i.e., model specific parameters, including quarterly or annually fiscal periods, ¶ 0046), quantifying a trending relationship between the first and second data (i.e., historical trends, and presenting information about the trending relationship to the first entity (i.e., presented via results generation 26, ¶ 0032).

As per claim 18, Quackenbush et al disclose the presenting operations are contemporaneous (i.e., process engine 24 computes results 26 of the process according to all data and assumptions, ¶ 0036).

As per claim 19, Quackenbush et al disclose presenting a screen display for the first entity, with the screen display including a direction-indicating icon that is indicative of the trending relationship between the first and second data (i.e., graph and/or table showing results and projected earning analysis directed at the base company, ¶ 0037 and 0045).

Claim 22 is rejected based upon the rejection of claim 1, since it is the computer readable medium claim, corresponding to the method claim.

As per claim 23, Quackenbush et al disclose a method of calculating values for a performance indicator for a plurality of business entities (i.e., comparable group

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analysis, ¶ 0021), comprising the operations of obtaining a first plurality of account balances for a first entity and a second plurality of account balances for a second entity (i.e., financial data of the base and second companies, ¶ 0032); calculating a first sum of a first group of account balances that is a subset of the first plurality of account balances, wherein the account balances of the first group encompass respective aspects of the first entity so that the first group consists of a first set of aspects (i.e., calculation of total assets, equity/assets, or cost/revenues, ¶ 0023); calculating a second sum of a second group of account balances that is a subset of the second plurality of account balances, wherein the account balances of the second group encompass respective aspects of the second entity so that the second group consists of a second set of aspects, wherein the second set of aspects does not include all of the aspects included in the first set of aspects (i.e., calculation of total assets, equity/assets, or cost/revenues, ¶ 0023); providing an equation that is for calculating a performance indicator and that includes a plurality of inputs (i.e., calculation of return on equity, margin, and market capitalization, ¶ 0023); determining a value for the performance indicator for the first entity/second entity by calculating the equation using the first sum as a first input of the inputs of the equation (i.e., financial metrics and performance ratios are calculated and compared, ¶ 0023).

As per claim 24, Quackenbush et al disclose uploading the first and second plurality of account balances to a web server via the Internet (web server 10, figure

1), wherein the calculating and determining operations are performed by the web server (§ 0031).

As per claim 25, Quackenbush et al disclose establishing a mathematical frame of reference that is at least partially based upon the value of the performance indicator for the first entity and the value of the performance indicator for the second entity (i.e., comparisons are made according to several historical ratios, § 0046); determining a rating value based upon a relationship between the mathematical frame of reference and the value of the performance indicator for the first entity (i.e., companies are ranked under the respective ratios, § 0046); and presenting the rating value to the first entity without disclosing the account balances of the second entity to the first entity (i.e., the system receives external network data feeds, and automatically re-computes displayed values without presentation of data to user, § 0016).

As per claim 26, Quackenbush et al disclose the second set of aspects includes a majority of the aspects included in the first set of aspects (i.e., performance ratios, including return on equity, margin, and dividend yield, § 0023).

As per claim 27, Quackenbush et al disclose the second set of aspects is a subset of the first set of aspects (i.e., performance ratios, including return on equity, margin, and dividend yield, § 0023).

Claim 28 is rejected based upon the rejection of claim 23, since it is the computer readable medium claim, corresponding to the method claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 15, 16, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quackenbush et al (US 2003/0172014), in view of Rebane (USPN 6,539,392).

As per claim 2, Quackenbush et al does not explicitly disclose presenting the rating value in the form of a colored icon. However, Quackenbush et al disclose results displayed in a variety of forms, including graphs and tables (§ 0037). In addition, Rebane discloses a dynamic icon, including a graphic image, such as a flashing color (column 34, lines 5-10). Both Quackenbush et al and Rebane are concerned with the evaluation of companies/merchants performance, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include colored icons in Quackenbush et al, as seen in Rebane, as an efficient means of differentiating the rating of various companies, thus making the system more robust.

As per claim 15, Quackenbush et al does not disclose the determining operation includes determining which of two or more percentage ranges that the data for the first entity falls within, with the two or more percentage ranges including a first

percentage range and a second percentage range; the icon is a first icon; and the operation of presenting the screen display includes: presenting the first icon in response to determining that the data for the first entity falls within the first percentage range, and presenting a second icon, which is different from the first icon, in response to determining that the data for the first entity falls within the second percentage range. Rebane discloses determining which of two or more percentage ranges that the data for the first entity falls within (i.e., percentage of products purchased from merchant, figure 1b), with the two or more percentage ranges including a first percentage range and a second percentage range (i.e., 1-25%, 26-50%, 51-75%, and 76-100%, figure 1b); presenting the first icon in response to determining that the data for the first entity falls within the first percentage range (i.e., a particular radio button icon would be marked, for example 26-50%, figure 1b), and presenting a second icon, which is different from the first icon, in response to determining that the data for the first entity falls within the second percentage range (i.e., a different radio button icon would be marked, for example 1-25%, figure 1b). Both Quackenbush et al and Rebane are concerned with the evaluation of companies/merchants, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include determining which of two or more percentage ranges that the data for the first entity falls within, in Quackenbush et al, as seen in Rebane, as an efficient means of determining a company/merchant standing with respect to a particular data measurement, thus making the valuation system of Quackenbush et al more flexible.

As per claim 16, Quackenbush et al does not disclose the first and second icons are different colors. However, Quackenbush et al disclose results displayed in a variety of forms, including graphs and tables (§ 0037). In addition, Rebane discloses a dynamic icon, including a graphic image, such as a flashing color (column 34, lines 5-10). Both Quackenbush et al and Rebane are concerned with the evaluation of companies/merchants, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include colored icons in Quackenbush et al, as seen in Rebane, as an efficient means of differentiating the rating of various companies, thus making the system more robust.

As per claim 20, Quackenbush et al disclose determining whether the first data is greater than or less than the second data (i.e., comparison of values, § 0046). Quackenbush et al does not disclose orienting the direction indicating icon in a first direction in response to determining that the first data is greater than the second data, and orienting the direction-indicating icon in a second direction, which is different from the first direction, in response to determining that the first data is less than the second data. Rebane discloses the trend of merchant average performance ratings, wherein the trend of performance criteria is mapped on graph to indicate upward or downward trend movements (figures 5a and 5b). Both Quackenbush et al and Rebane are concerned with the evaluation of companies/merchants, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include orienting the direction indicating icon in a first direction in response to determining that the first data is greater than the second data and

vice-versa, in Quackenbush et al, as seen in Rebane, as an efficient means of determining a company/merchant standing with respect to a particular data measurement, thus making the valuation system of Quackenbush et al more flexible.

As per claim 21, Quackenbush et al discloses ranking the data for the first entity (§ 0046). Quackenbush et al does not disclose presenting an icon that is indicative of the ranking in the screen display so that one of the icons overlays the other of the icons. Rebane discloses icons overlaying other icons (figures 5a and 5b). Both Quackenbush et al and Rebane are concerned with the evaluation of companies/merchants, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include overlaying icons, in Quackenbush et al, as seen in Rebane, as an efficient means of determining a company/merchant standing with respect to a particular data measurement, thus making the valuation system of Quackenbush et al more flexible.

10. Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quackenbush et al (US 2003/0172014), in view of Edar (USPN 6,393,406).

As per claim 29, Quackenbush et al disclose a method of calculating values of a performance indicator for a plurality of business entities (i.e., comparable group analysis, § 0021), comprising the operations of obtaining a first plurality of account balances for a first entity and a second plurality of account balances for a second entity (i.e., financial data of the base and second companies, § 0032); calculating a first sum of a first group of account balances that is a subset of the first plurality of

account balances (i.e., calculation of total assets, equity/assets, or cost/revenues, ¶ 0023), calculating a second sum of a second group of account balances that is a subset of the second plurality of account balances (i.e., calculation of total assets, equity/assets, or cost/revenues, ¶ 0023), providing an equation that is for calculating a performance indicator and that includes a plurality of inputs (i.e., calculation of return on equity, margin, and market capitalization, ¶ 0023); determining a value for the performance indicator for the first entity/second entity by calculating the equation using the first sum as a first input of the inputs of the equation (i.e., financial metrics and performance ratios are calculated and compared, ¶ 0023). Quackenbush et al does not disclose wherein the account balances of the first group respectively encompass sales of multiple models sold under a first brand, and wherein the account balances of the second group respectively encompass sales of multiple models sold under a second brand, wherein the models sold under the second brand are different than the models sold under the first brand and the first brand is different from the second brand. Edar discloses external databases used for obtaining information that enables categorization and valuation of assets such as brand names (column 14, lines 47-51). Both Quackenbush et al and Edar are concerned with effective company valuation, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include sales of multiple models sold under a first and second brand in Quackenbush et al, as seen in Edar, as an efficient means of distinguishing sales data of the companies in the Quackenbush et al system, thus making the system more robust and flexible.

As per claim 30, Quackenbush et al disclose establishing a mathematical frame of reference that is at least partially based upon the value of the performance indicator for the first entity and the value of the performance indicator for the second entity (i.e., comparisons are made according to several historical ratios, ¶ 0046); determining a rating value based upon a relationship between the mathematical frame of reference and the value of the performance indicator for the first entity (i.e., companies are ranked under the respective ratios, ¶ 0046); and presenting the rating value to the first entity without disclosing the account balances of the second entity to the first entity (i.e., the system receives external network data feeds, and automatically re-computes displayed values without presentation of data to user, ¶ 0016).

As per claim 31, Quackenbush et al disclose uploading the first and second plurality of account balances to a web server via the Internet (web server 10, figure 1), wherein the calculating and determining operations are performed by the web server (¶ 0031).

Claim 32 is rejected based upon the rejection of claim 29, since it is the computer readable medium claim, corresponding to the method claim.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Afsah (USPN 6509730) discloses measuring the performance of a facility.

-Johnson et al (US 2002/0007332) disclose comparing financial products as funding sources.

-Stoneking et al (US 2003/0050814) disclose a collection of business performance data.

-Paquette (US 2005/0021432) disclose analyzing the use of profitability of an organization.

-White, Jr. (USPN 6088676) disclose performance evaluation.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (571) 272-6726. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



adb
June 16, 2005



ALEXANDER KALINOWSKI
PRIMARY EXAMINER